



January 14, 2008

Kristen Swartwout  
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P.O. Box 556  
Brattleboro, VT 05302-0556

Re: Request for Jurisdictional Opinion #2-250 for property in Newfane owned by Barbara O'Neil

Dear Kristen:

As per your request this is a jurisdictional opinion regarding the property owned by Barbara O'Neil on Depot Street in Newfane. As noted below, it is my opinion that the work Ms. O'Neil completed on her property does not constitute a substantial change to a pre-existing development and thus an Act 250 permit is not required. I am basing this opinion on the following facts:

1. The property was used for commercial purposes since 1967 when it was owned by John and Florence Rankin. The garage was used as a mechanic's shop and as an upholstery business.
2. In the 1980's the property was sold to Kevin and Deborah Moore who added a one-bedroom apartment over the garage which was later converted as office space.
3. In 2004 Ms. O'Neil purchased the property and spent approximately \$350,000 dollars in renovations, these included:
  - \* replacement of windows
  - \* adding windows to the barn
  - \* finishing and heating (gas heater) a section of the barn for a yoga studio
  - \* enlarging the leach field
  - \* adding decks to the garage and house
  - \* adding a porch to the house
  - \* three and one half bathrooms were addedThese renovations were undertaken to run a massage/yoga business where clients could stay overnight.
4. The house and barn were built in the 1850's.
5. Judith Ehrlich from the Division of Historic Preservation reviewed the pictures of the

house and barn and determined that the addition of the decks and windows did not have a significant impact under Criterion 8 Historic Sites, given the fact that the barn had been previously altered with a sliding glass door and the 1850's windows in the house had been replaced in the past.

6. Ms. O'Neil has discontinued her business due to lack of clients and has marketed the property as residential.

**Conclusion:**

The question to determine is whether the construction completed by Ms. O'Neil is a substantial change to a pre-existing development. The commercial use of the property before 1970 qualifies the property as a pre-existing commercial development and thus it is necessary to determine if there has been a substantial change to the development which would have a significant impact under one or more of the 10 environmental criteria of Act 250. It is irrelevant as to whether Ms. O'Neil has abandoned her commercial use as the construction has been completed and is lasting. (See *In Re: Wildcat Construction*, 160 VT 631, 632 (1993), affirming, *Re: Wildcat Construction Co., Inc.* #6F0283-1EB, Findings of Fact, Conclusions of Law and Order (November 4, 1991).

With respect to whether the construction has had a significant impact on any of the 10 Act 250 environmental criteria, my first concern was the potential for impact under Criterion 8 Historic Sites given the age of the house and barn. Judith Ehrlich reviewed the photos and determined the house is eligible for listing on the State Register of Historic Sites. Ms. Ehrlich, however, does not believe the exterior changes to the house and barn made by Ms. O'Neil, although not desirable from a historic preservation perspective, rise to the level of significant impact given the previous changes to the buildings.

From the information provided, the other changes, though fairly extensive do not appear to have potentially *significant* impact under the other criteria. In looking at the potential impacts under Criterion 5 Traffic Safety and Congestion I am assuming the context of Ms. O'Neil's intended use of the project as a massage /yoga business with some overnight guests. In conclusion, the construction for a commercial purpose undertaken by Ms. O'Neil does not trigger Act 250. Any future changes to the property undertaken for a commercial purpose will need to be reviewed.

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Pursuant to §6007 **Act 250 disclosure statement; jurisdictional determination**, if you are seeking a final determination please provide a list of adjoining property owners or other persons who would likely be able to demonstrate a particularized interest so that this opinion can be mailed to them.

Please do not hesitate to contact me if you have any questions.

Best regards,

April Hensel /s/

April Hensel  
District 2 Coordinator

c: See Certificate of Service

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3.

Reconsideration requests are governed by Act 250 Rule 3(C) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Drawer 20, Montpelier, VT 05620-3201, in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The Environmental Court mailing address is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)

